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CITATIONS

797–824—65

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 341

FLOYD A. WALLIS, PETITIONER

v.

PAN AMERICAN PETROLEUM CORPORATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of October 11, 1965, inviting the Solicitor General to express the views of the United States.

STATEMENT

1. It may help in understanding the nature of the dispute which gave rise to this litigation to explain at the outset why different applications must be filed for an oil and gas lease on federal lands depending on whether the land in question is "acquired" or "public domain" land, and the significance of the distinction. Acquired lands, in general, are those granted

or sold to the United States by States or citizens thereof; public domain lands of the United States are those that were never in private or (with some exceptions) State ownership. Mineral leases on public domain lands are governed by the Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. 181 *et seq.* Congress, however, made no provision for mineral leases on acquired lands until 1947, when it enacted the Mineral Leasing Act for Acquired Lands, 61 Stat. 913–915, 30 U.S.C. 351–359.

In general, the later Act incorporates the provisions of the earlier. See 30 U.S.C. 189; 43 C.F.R. 3210.0–3(a), 3211.3. However, there are some significant substantive differences between the two Acts. For example, receipts derived by the United States from the leases are treated differently. Compare 30 U.S.C. 191 with 30 U.S.C. 355. Leases of acquired lands, but not of public domain lands, require the consent of the federal agency having jurisdiction of the lands,[1] and that agency may impose conditions in the lease. 30 U.S.C. 352. In addition, leases on acquired but not public domain lands may cover future as well as present interests. 30 U.S.C. 354. As a result of these and other differences between acquired and public domain lands, different information is required on the lease applications. Compare 43 C.F.R. 3123 with 43 C.F.R. 3212. And, all concede (see R. 68, n. 10), an application filed under the wrong statute will not be accepted by the Secretary and confers no

[1] Public domain lands are under the exclusive jurisdiction of the Department of the Interior; acquired lands are under that Department's jurisdiction only for limited purposes such as mineral development.

rights upon the applicant. See 43 C.F.R. 3123.4, 3212.4(d), 3212.1(b). Hence, an applicant who is unsure whether the land on which he is seeking an oil and gas lease is acquired or public domain land must file a separate application under each mineral leasing law.[2] The nub of the dispute giving rise to the present case is whether, in contracting with express reference only to applications filed under the acquired lands Act, the parties meant to cover a later-filed successful public-domain-lands application on the same tract.

2. Petitioner, Floyd Wallis, found an 830-acre tract of oil-rich "mud lumps"[3] located in the State of Louisiana, but belonging to the United States (R. 65). On June 2, 1954, he filed with the Secretary of the Interior applications for a lease to develop the oil and gas deposits of the tract. Assuming that the mud lumps were acquired lands (R. 67 and n. 6), Wallis applied only under the Mineral Leasing Act for Acquired Lands (R. 66).

On January 3, 1955, he and respondent McKenna agreed in writing that the latter had "a ⅓ undivided interest in the above captioned oil and gas lease applications and that [his] ⅓ interest, of course, covers such lease or leases as may be issued to [Wallis] under these captioned applications" (R. 9, 67). Apparently, the consideration for this grant to McKenna was the latter's representation of Wallis before the Depart-

[2] Such double filing is permissible. Petitioner did it here (see pp. 3–4, *infra*).

[3] The mud lumps are a string of recently-emerged islands in the mouth of the Mississippi River.

ment of the Interior (Brief for Petitioner, p. 8). The "captioned applications" referred to in the agreement were the acquired-lands applications Wallis had filed on June 2, 1954 (R. 8).

On March 3, 1955, Wallis (who under the agreement with McKenna had "sole discretion and direction" (R. 9, 67, n. 5) with respect to dealing in connection with the leases) sold respondent Pan American an option "to acquire any and all oil and gas leases which may be issued to Wallis, his heirs or assigns, under and by virtue of the above referred to applications." (R. 42, 67.) The reference was to Wallis' "applications for * * * oil and gas leases on acquired lands" which he had filed with the Secretary of the Interior on June 2, 1954 (R. 40). The option agreement also contained a provision that Wallis would "make diligent efforts to acquire leases * * * covering all of said lands" (R. 42).

About a year later, Wallis decided that the mud lumps might not be acquired lands after all, and, without entering into any new agreements with respondents, filed an application for an oil and gas lease of the mud lumps as public domain lands under the Mineral Leasing Act of 1920 (R. 68–69). Wallis' new application was approved and a lease issued to him by the Secretary on December 19, 1958 (R. 78). The award of the lease to Wallis was upheld against the claim of another applicant in *Morgan* v. *Udall,* 306 F. 2d 799 (C.A. D.C.), certiorari denied, 371 U.S. 941.

Shortly after the Secretary issued the lease to Wallis, McKenna commenced the present action in the Federal District Court for the Eastern District

of Louisiana, predicating federal jurisdiction on diversity of citizenship (R. 1). McKenna alleged that he had been Wallis' joint venturer (R. 2), that he was entitled to a ⅓ interest in the public-domain-lands lease issued to Wallis (R. 6), and that Wallis had refused to assign him his interest. Declaratory relief was asked (R. 7). Pan American filed a complaint in the same court against Wallis, also based on the court's diversity jurisdiction (R. 32), alleging that the option agreement covered the lease of public domain lands (R. 33) and that in any event Wallis was estopped to claim otherwise in view of the provision of the option agreement requiring him to make diligent efforts to acquire a lease of the mud lumps (R. 37). The complaint asked that Wallis be ordered to perform the option agreement by formally assigning the oil and gas lease to Pan American (R. 39).

The actions were tried together. At the close of trial, the district court, Judge Wright, gave judgment for petitioner. 200 F. Supp. 468 (E.D. La.) (R. 65). He held that the question whether respondents had acquired interests in the lease obtained by petitioner was governed by the law of Louisiana (R. 70), and, accordingly, that the only basis for the relief sought by respondents could be the two written instruments—the letter agreement with McKenna made on January 3, 1955, and the option agreement with Pan-American of March 3, 1955 (R. 69–70). Under Louisiana law, not only was parol evidence inadmissible but Pan-American could not obtain an interest in a mineral lease by estoppel; hence, even if Wallis had breached the "diligent efforts" clause, Pan American could not

obtain, by way of remedy, specific performance of the option agreement (R. 70–71, nn. 15–16). Construing the written instruments, Judge Wright found that they spoke exclusively of acquired-lands leases (R. 71), and that, since the Mineral Leasing Act for Acquired Lands and the Mineral Leasing Act of 1920 established separate and distinct application procedures for acquired and public domain lands (see pp. 1–3, *supra*), a public-domain-lands application could not be viewed "as a mere amendment of, or substitute for," an acquired-lands application (R. 73–74 and nn. 20–22). He further noted that the parol evidence in the case (which he had in fact admitted, albeit he deemed it inadmissible (R. 71 and n. 17)) confirmed his finding that the parties' agreements were strictly limited to the acquired-lands applications and did not carry over to the public-domain-lands application granted by the Secretary (R. 69–73).

The Court of Appeals for the Fifth Circuit, one judge dissenting, reversed. 344 F. 2d 432 (R. 78); on rehearing, 344 F. 2d 439 (R. 107). Without indicating any view of the merits (R. 114), the court held that in light of the "comprehensive scheme of federal regulation" embodied in the Mineral Leasing Act, the "interest of the United States [was] directly affected" by the controversy between the parties so as to make federal rather than State law applicable to determining the merits of respondents' claims (R. 113). Judge Wisdom, dissenting, stated that he could "find no decisional or doctrinal justification for applying judge-made federal common law to a private dog-fight

in which the federal government's interest, if any, seems to me to be that of a bored spectator." (R. 133.)

DISCUSSION

1. The issue here, in essence, is whether State or federal law governs the adjudication of a dispute among three private individuals over their respective interests in an oil and gas lease issued by the United States under the Mineral Leasing Act of 1920. More concretely, it is whether Louisiana's apparent refusal to recognize estoppel as a basis for obtaining an interest in a mineral lease bars Pan American's claim—for Judge Wright's findings of fact (unless the court of appeals were to find them clearly erroneous [4]) would appear to exclude the relief sought by respondents on any other theory irrespective of what law was applied.[5] We note, further, that respondents' claims against Wallis are not based upon any alleged violation by Wallis of a federal statute, regulation, or order, that the validity of the lease by the United

[4] Since it reversed Judge Wright on the sole ground that he had applied the wrong law, the court of appeals did not consider the correctness of the findings of fact contained in Judge Wright's opinion (he did not issue separate findings). Their correctness, accordingly, is not an issue before this Court in this case.

[5] Judge Wright, as mentioned earlier, considered all the evidence of the parties' conduct and intentions, despite his view that Louisiana law rendered such evidence inadmissible to determine interests in Wallis' oil and gas lease. Yet he found that there was no agreement beween Wallis and respondents applicable to that lease. This, it seems, leaves only Pan American's estoppel claim, based on the "diligent efforts" clause of the option agreement, as a basis of relief consistent with the court's findings.

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States issued to Wallis is not here in issue,[6] and that the United States was not a party to the transaction in suit (compare *Clearfield Trust Co.* v. *United States*, 318 U.S. 363). In these circumstances, we believe that the rights of the litigants may properly be left to determination under principles of State law unless the application of such principles would undermine some federal interest or policy—here, one drawn from the Mineral Leasing Act of 1920. See *Free* v. *Bland*, 369 U.S. 663; *Bank of America* v. *Parnell*, 352 U.S. 29; *Sola Electric Co.* v. *Jefferson Co.*, 317 U.S. 173; Note, *The Competence of Federal Courts to Formulate Rules of Decision*, 77 Harv. L. Rev. 1084 (1964). We doubt there is any substantial danger of such conflict here.

2. It is true, as the court of appeals noted, that the Mineral Leasing Act of 1920 subjects the exploitation by private individuals of the oil and gas deposits found on public domain lands of the United States to comprehensive federal regulation. Reviewing its legislative history in *Boesche* v. *Udall*, 373 U.S. 472, 480–481, this Court pointed out that the Act was born of concern with the depletion of the nation's oil resources through inadequate legal control. The solution adopted by Congress was to give the Secretary of the Interior "the right to supervise, control, and

[6] This distinguishes *Irvine* v. *Marshall*, 20 How. 558, strongly relied on by the court of appeals in its first opinion (R. 80–82). There this Court held only that State law could not control the question whether the United States had made a grant of land. Once that question was resolved under federal law, however, the Court indicated that State law was applicable to the determination of private disputes over interests in the grant. 20 How. at 567.

regulate" the private exploitation of such resources on public domain lands to the end of fostering conservation and preventing "monopoly and waste and other lax methods * * *." H. Rep. No. 1138, 65th Cong., 3d Sess., p. 19; see H. Rep. No. 398, 66th Cong., 1st Sess., pp. 12–13.

The provisions of the Act reflect this dominant theme. Section 17(a), 30 U.S.C. 226(a), authorizes the Secretary of the Interior to lease lands known or believed to contain oil or gas deposits. There is no provision for the sale of such lands; the United States reserves the fee interest to facilitate continuing supervision and control by the Secretary. *Boesche* v. *Udall, supra,* at 477–478. Leases on lands (such as the Wallis mud lumps) which are not within any known geologic structure of a producing oil or gas field are awarded to the first applicant—if he is qualified. Section 17(c), 30 U.S.C. 226(c). Qualifications are prescribed in Section 27 of the Act, 30 U.S.C. 184, which limits the amount of acreage that any one person or firm can hold under oil or gas leases or options, and in Section 1, 30 U.S.C. 181, which forbids certain aliens to hold under such leases.

Any assignment or sublease of a lease issued under the Act must be approved by the Secretary of the Interior (Section 30, 30 U.S.C. 187), but he may disapprove only if the assignee or sublessee is disqualified under the Act or has failed to post the required bond. Section 30a, 30 U.S.C. 187a.[7] The lease must contain provisions prescribed in the Act for ensuring

[7] These provisions are expressly applicable to partial assignments as well.

the skill and safety of the operations under the lease and for other specified purposes, and in addition the Secretary may require "such other provisions as he may deem necessary * * * for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare." Section 30, 30 U.S.C. 187. There are detailed provisions in the Act for the surrender, forfeiture, and cancellation of leases (see, *e.g.*, Section 31, 30 U.S.C. 188; 30 U.S.C. 188a) and numerous provisions vesting the Secretary with control and supervision over various aspects of the actual operations under the lease. See, *e.g.*, Section 17(j), 30 U.S.C. 226(j). Finally, the Secretary is given comprehensive rule-making authority to implement the statutory provisions. Section 32, 30 U.S.C. 189. Such, in brief summary, is the scheme of the Act.

3. We find nothing in this scheme inconsistent with allowing State law to govern the rights *inter se* of coventurers in a valid oil and gas lease duly issued to one of them by the Secretary of the Interior. Certainly, there is no danger of undermining the Secretary's regulatory authority under the Act. The Secretary's interest is that the oil and gas deposits found on public domain lands be exploited only by qualified persons in conformity with the proper lease provisions. This interest cannot be adversely affected by the present litigation. All concede that Wallis is a qualified applicant holding a valid lease. Thus, if he prevails in the suit, the status quo—so far as the Secretary is concerned—is unaffected. If, on the other hand, McKenna and/or Pan American pre-

vail and Wallis is ordered to assign the lease in whole or part to one or both of them, they nevertheless will obtain no rights in the oil and gas deposits unless the assignment is approved by the Secretary. He cannot approve it unless the assignee is qualified. And if the assignment is approved, Section 30a expressly provides that the assignee shall assume all of the obligations imposed by the lease on the original lessee. Assignment pursuant to a private agreement, therefore, cannot impair the Secretary's authority over the mineral exploitation of public lands. Since the outcome of the present case is thus of no concern from the Secretary's standpoint, neither is the law applied in such litigation.

We emphasize that the Secretary has not been empowered by Congress to compel assignments or to determine the rights of Wallis, McKenna, and Pan American *inter se*. The Act contains no provisions governing the private business relations of parties to oil and gas ventures and does not purport to impose on oil and gas entrepreneurs a duty to deal fairly with their partners or associates:[8] a lease must be issued to the first qualified applicant and an assignment to a qualified applicant who posts the required bond must be approved. Nor does it appear that Wallis' alleged misconduct would be a basis for cancellation of his lease. The only grounds for cancellation specified in the Act involve the violation of statu-

[8] Section 18 of the Act, 30 U.S.C. 227, does deny the benefits *of that section* (the provisions of which are not pertinent here) to a lease claimant guilty of fraud, but there is no similar provision applicable to the Act in general.

tory provisions, the Secretary's regulations thereunder, or lease provisions. Sections 16, 27, 31; 30 U.S.C. 225, 184, 188.[9]

The short of it is that the Secretary's power over private agreements with respect to interests in oil or gas leases is directed at preventing control of such leases from falling into the hands of disqualified persons,[10] and we do not see how such power can be impaired by the use of State law to determine the rights created by such private agreements. This has been the consistent view of the Secretary, summarized in a recent Department of Interior decision in *McCulloch Oil Corporation of California*, No. A–30208 (November 25, 1964), as follows:

[9] To be sure, *Boesche* v. *Udall*, 373 U.S. 472, held that the Secretary had, in addition, inherent authority to cancel a lease issued by mistake. But this authority was obviously necessary to vindicate the statutory limitations upon the issuance of oil and gas leases. There is no such limitation with respect to the issuance of a lease to a person who may have dealt unfairly with or misled, not the Secretary, but only his co-venturers. Further, any unfairness by Wallis here occurred after he obtained the lease, when he refused to assign interests therein to McKenna or Pan American. The Court in the *Boesche* case intimated that the statutory provisions for cancellation might be exclusive with respect to post-lease factors. See 373 U.S. at 478–479.

[10] This is true of options as well as assignments. The Act requires the filing with the Secretary of notices of options, and he must approve options that run for more than three years. Section 27(d)(2), 30 U.S.C. 184(d)(2). These requirements, however, are solely directed toward preventing evasion of the acreage limitations imposed by the Act (see p. 9, *supra*). The validity of an option as between the parties to it is entirely separate from its validity under Section 27(d)(2), and the Act says nothing about the former question.

> The Department has consistently held that it will not act on an assignment of an oil and gas lease submitted for approval when it has notice of a controversy between the parties as to the effect or validity of the assignment. [Citations.] In cases where an assignment has been approved without notice of a controversy as to its effect or validity and the Department subsequently receives notice of a controversy, it has declined to disturb existing conditions or to approve any change without evidence of an agreement among the parties or a court decree on the matter in controversy. [Citations.]
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> The central fact remains that there is a controversy between McCulloch and Chittim as to whether Chittim is entitled to an assignment. McCulloch does not question the validity of the assignment when it was executed by Cuban American on April 1, 1965. McCulloch apparently contends only that the assignment became invalid for reasons occurring after execution of the assignment. What these reasons are and whether they are valid seem to involve questions of contract law and possibly State corporation law. In any event, they are not matters within the jurisdiction of the Department to decide.

4. It is arguable that even if, as we say, the Secretary's authority would not be undermined by the application of State law in cases of this sort, the promotion of fair dealing between co-venturers is vital to the broader objectives of the Mineral Leasing Act—the conservation of an essential natural resource, the promotion of efficiency, and the prevention of monop-

oly—and, therefore, federal law should govern the business relations *inter se* of oil and gas co-venturers, as well as their relations with the Secretary. There are, however, two complete answers to this contention. The first is that the possible impact on federal interests of disputes such as that between petitioner and respondents is simply "too speculative" to justify fashioning a federal common law of oil and gas agreements. *Free* v. *Bland,* 369 U.S. 663, 669; *Bank of America* v. *Parnell,* 352 U.S 29, 34. It is possible that under a uniform federal rule Pan American would be entitled to prove, if it could, that it obtained rights to Wallis' lease by estoppel; but it is not suggesed how the objectives of the federal Act would be materially furthered by such an outcome.

The second (and related) answer is that there is no indication that State law is inadequate to prevent fraud, unfairness, bad faith, or breach of contract between oil and gas entrepreneurs and that a federal rule is therefore needed. As the facts of the present case illustrate, the issues involved in such disputes are the kind normally resolved as questions of private law. They are local rather than federal in character. They involve the determination of rights of private litigants *inter se*—not their rights against the government—and this is precisely the province of State law.[11]

5. We wish to emphasize our belief that, while there may be no harm to the objectives of the federal min-

[11] As Judge Wisdom showed (R. 116–117, n. 5), it does not appear that the law of Louisiana is in general inadequate to resolve disputes between co-venturers in oil and gas matters fairly and equitably.

eral leasing laws in leaving to the governance of State law purely private agreements to divide interests in oil and gas leases, federal law should control questions affecting the rights or interests of the United States in its lands. The critical distinction, in our view, is between a controversy over rights in a mineral lease as between private parties, such as the litigants here, and a controversy over rights of a private applicant, lessee, or assignee as against the United States. The first kind of dispute is anterior, as it were, to any federal concern; it does "not intrude upon the rights and the duties of the United States" (*Free* v. *Bland,* 369 U.S. 663, 669); and it may therefore be left to the ordinary State-law rules for the adjudication of private controversies. Once that dispute is resolved, the federal interest comes into play. For the party who succeeds in establishing his interest in an oil and gas lease on federal lands must then comply with the statutory requirements governing the assignment of leases and the obligations of assignees. The rights and duties of the assignee vis-à-vis the Secretary are governed by federal, not State, law. Cf. *United States* v. *93.970 Acres,* 360 U.S. 328; *State Box Co.* v. *United States,* 321 F. 2d 640 (C.A. 9); but cf. *Leiter Minerals, Inc.* v. *United States,* 329 F. 2d 85 (C.A. 5), vacated as moot, 381 U.S. 413.

An example will illustrate the distinction. The Secretary has issued a regulation requiring disclosure of the names of all parties who have any "interest" in an assignment (43 C.F.R. 3128.1), interest being defined broadly (43 C.F.R. 3100.0–5(a)). The pur-

pose, of course, is to ensure that the lease does not fall into the hands of a disqualified person (see p. 9, *supra*). The regulation goes on to provide that any agreement with respect to an interest in the assignment must be disclosed, even an oral agreement. It is our view that under this regulation an assignee may not conceal the existence of an oral agreement respecting an interest in the assignment on the ground that such an agreement is unenforceable by virtue of Louisiana's parole evidence rule. Information needed by the Secretary to enable him to enforce the provisions of the Mineral Leasing Act cannot be withheld on the strength of a State rule of evidence. Here, however, Louisiana law is being applied to determine, not rights against the Secretary, but only rights as between private parties. In these circumstances, no federal interest appears to be impaired by deferring to State law.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
EDWIN L. WEISL, JR.,
Assistant Attorney General.
RICHARD A. POSNER,
Assistant to the Solicitor General.
ROGER P. MARQUIS,
Attorney.

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